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MICHAEL RODAK, JR., CLE

IN THE

Supreme Court of the United States

October Term, 1974

No. 74-4411

JOHN H. MEIER,

Petitioner,

vs.

GEORGE H. BOLDT, U.S. District Judge, District of Nevada, and UNITED STATES OF AMERICA,

Respondents.

Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

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GEORGE H. BOLDT, U.S. District Judge, District of Nevada, and UNITED STATES OF AMERICA,

Respondents.

Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

Petitioner hereby petitions this Court for a writ of certiorari to the United States Court of Appeals for the Ninth Circuit.

Proceedings Below.

The Order of the District Court is unreported, but the minute order denying defendant's motion to dismiss and to suppress illegally obtained evidence is attached hereto as Appendix A. The Order of the Court of Appeals is unreported, but the minute order of September 12, 1974 denying petitioner's Petition for Writ of Mandamus and/or Prohibition is attached as Appendix B.

Jurisdiction.

The Petition for Writ of Mandamus and/or Prohibition, #74-2650, was filed with the Court of Appeals for the Ninth Circuit August 30, 1974 and the minute

order denying it was filed September 12, 1974. Jurisdiction of this Court is based on 28 U.S.C. §1254(1), §1651(a).

Questions Presented.

1. Whether the respondent U.S. District Judge could arbitrarily and unreasonably fail to apply well-defined concepts of comity, *res judicata*, and collateral estoppel in denying this petitioner's motion to dismiss Count I of an indictment under 18 U.S.C. §371, despite a final Order of Dismissal based on the insufficiency of the identical, verbatim count of the same indictment to charge a crime entered on motion of a co-defendant by a U.S. District Judge in another district, from which the U.S. has not appealed.

2. Whether the respondent Judge could arbitrarily and unreasonably fail to apply well-defined concepts of *res judicata* and collateral estoppel in denying this petitioner's motion to suppress illegally obtained evidence and for return of property, despite a final Judgment granting a Permanent Injunction entered prior to the indictment in question (providing the identical relief prayed for in the motion), in an independent action against the Attorney General, the U.S. Attorney for the Central District of California, and attorney John Suckling, based on the conclusion that the petitioner's Constitutional rights under the 4th, 5th, 6th, and 14th Amendments had been violated by the defendants.

3. Whether it was an abuse of discretion for the Court of Appeals to have denied the Petition for Writ of Mandamus and/or Prohibition.

Statement of the Case.

On January 14, 1974 the Grand Jury in Las Vegas, Nevada returned an indictment, #LV 74-10, copy of which is attached as Appendix C. Count I thereof charges a conspiracy under 18 U.S.C. §371 against John H. Meier, Robert Kahan, Anthony Hatsis, James P. Cowley. On motion of Hatsis and Cowley, under Fed. R. Crim. P. 21(b), the indictment was transferred to the District of Utah. Cowley there moved to dismiss Count I on the grounds of insufficiency to constitutionally charge a crime, and his motion was granted on June 20, 1974. A copy of the Memorandum Opinion is attached as Appendix D. The Government's time for appeal has since expired.

Meier's motion to dismiss based on the insufficiency of Count I to meet the Constitutional standards of legal sufficiency for a proper indictment and to meet the criterion that the offense be charged with the type of particularity required by Fed. R. Crim. P. 7(c) and based on the fact that the indictment's charging allegations were the same as to all defendants and it was therefore barred as a matter of comity, *res judicata* or collateral estoppel, was denied by respondent Boldt, U.S. District Judge for the Western District of Washington, sitting by assignment in the District of Nevada, on August 2, 1974. Despite the fact that the charging allegations of Count I do not distinguish in any respect among the defendants, the District Judge ruled that Chief Judges Ritter's dismissal of Count I was not binding on him.

Meier's motion to suppress illegally obtained evidence and for return of property was bottomed on a Judgment granting Permanent Injunction and for Return of Property, copy of which is attached as Appendix E, entered in a proceeding in the Central District of California, styled *Meier v. Keller, Bork, and Suckling*, C.D.Cal., Civil No. 73-3019-AAH, now pending in the Court of Appeals on cross-appeals ##74-1182, 1673 (9th Cir.). The prayer of the motion to suppress was identical to the relief granted in that final Judgment entered January 9, 1974 prior to the indictment in question. Respondent Boldt denied said motion August 2, 1974 on the grounds that that ruling regarding the violation of Meier's Constitutional rights and the attorney-client relationship between Meier and Suckling was not binding on him, despite the resolution of the identical issue by another U.S. District Judge.

On August 30, 1974 Meier petitioned the Court of Appeals for the Ninth Circuit to issue a Writ of Mandamus and/or Prohibition, in connection with the usurpation of power and arbitrary action of respondent Boldt in so ruling. The Order denying the petition was filed September 12, 1974.

REASONS FOR GRANTING THE WRIT.

I

Mandamus and/or Prohibition Should Properly Issue.

This Court and the Court of Appeals have jurisdiction under the All Writs Act, 28 U.S.C. §1651(a) to provide the relief prayed for herein.

In the 1957 case of *La Buy v. Howes Leather Co.*, 352 U.S. 249, this Court held that it was proper for the courts of appeals to employ writs of mandamus to effectuate "supervisory control" over district courts. In *Schlagenhauf v. Holder*, 379 U.S. 104 (1964), this Court held that in certain circumstances courts of appeals could properly decide "important" issues of law brought to them on petitions for mandamus. This decision allows for the use of mandamus for certain "advisory" purposes, a use that would not have been authorized under the traditional standards of propriety. This has been interpreted to mean that "the purpose of the All Writs Act . . . is to enable federal appellate courts to review by mandamus non-appealable interlocutory orders which would be the subject of review on appeal from a final judgment." *Grace Lines, Inc. v. Motley*, 439 F.2d 1028, 1031, n.2 (2d Cir. 1971).

As discussed *infra*, the respondent District Judge has taken definable action he was not empowered to take, constituting a "jurisdictional error" which mandamus lies to correct. His denial of the two motions to dismiss the conspiracy count and to suppress illegally obtained evidence constitutes clear error in light of the decisions of this Court. As this Court said in *Gillespie v. U.S. Steel Corp.*, 379 U.S. 148, 153:

> "It is true that the review of this case by the Court of Appeals could be called 'piecemeal'; but it does

> not appear that the inconvenience and cost of trying this case will be greater because the Court of Appeals decided the issues raised instead of compelling the parties to go to trial with them unanswered. We cannot say that the Court of Appeals chose wrongly under the circumstances. And it seems clear now that the case is before us that the eventual costs, as all the parties recognize, will certainly be less if we now pass on the questions presented here rather than send the case back with those issues undecided. . . .
>
> "We think that the questions presented here are equally 'fundamental to the further conduct of the case.' " *Id.* at 154.

Although this Court recently had occasion to refer to the policy against piecemeal reviews, *United States v. Nixon*, ... U.S. .... (7/24/74), the extraordinary circumstances and the usurpation of power by the respondent judge compel the conclusion that the Court of Appeals did have "the 'naked power' to issue the writ." *Pacific Car & Foundry v. Pence*, 403 F.2d 949, 952 (9th Cir. 1968).

> "The exercise of that 'sound discretion' requires the weighing of numerous factors, including the possible disruption of orderly trial processes as opposed by the hardship and loss of rights that may result from delay of review, and the saving of an expensive and protracted trial that leads nowhere but to a complete retrial." *Id.* at 953.

The conspiracy count could easily take two months to try and will require the attendance of witnesses possibly from the Netherlands, England, Switzerland, Lichtenstein, the Bahamas, Netherland Antilles, Grand Cayman,

Belgium, and Canada. The expense both to this petitioner and to the Government of such an extended trial and possibly a retrial after appeal will be exorbitant. The Assistant U.S. Attorney to whom the criminal case is assigned recently indicated to petitioner's counsel that probably the conspiracy case would not be prosecuted if Suckling's testimony were suppressed. The clearly erroneous order of the district court is of such an exceptional and extraordinary nature that it justifies use of the writ of mandamus. A ruling contrariwise on the motion to dismiss or to suppress would no doubt result in not only dismissal of the indictment, but a decision not to prosecute.

In some cases, while declining to issue extraordinary writs, courts of appeals in the exercise of their responsibility for the administration of justice considered it appropriate to admonish district judges that their actions seemed to be imprudent and risked the reversal of any resulting convictions. See, *e.g., Stans v. Gagliardi,* 485 F.2d 1290 (2d Cir. 1974) [involving a claim of insufficient time to prepare for trial]; *Ellsberg v. U.S. District Court* (9th Cir. No. 72-3085) [involving the district court's refusal to discharge a jury in a widely publicized case after the trial had been stayed by a Justice of this Court]. In both cases, the district judges pursued the responsible course and accepted the guidance of the appellate courts, even though not strictly obligated to do so, and reconsidered their earlier denials of the relief requested. Similarly issuance of the writ here should correct the usurpation of power by the District Judge as petitioner's claim to relief is clear and indisputable since the two motions should have been granted as a matter of law.

II

Relitigation of the Sufficiency of Count I Was Barred by Res Judicata.

Over 50 years ago this Court in *United States v. Oppenheimer*, 242 U.S. 85 (1916), said that the doctrines of collateral estoppel and *res judicata* extend to criminal prosecutions. More recently, *Ashe v. Swanson*, 397 U.S. 436 (1970) reiterated the applicability of these doctrines. Accordingly, the dismissal of Count I binds the Government, particularly since it failed to appeal from such dismissal. There is no doubt that one Grand Jury in Nevada heard all the same evidence which generated the indictment charging Cowley and Meier. There is only one indictment, which has yielded in effect through mitosis separate cases in different districts. The administrative technicalities generated by having a separate clerk's office for each judicial district should not cloud the issue by making what was initially one case and one indictment into three.[1] Basically, it remains one case from a pleading point of view and the same result should obtain in each district. Count I does not differentiate or distinguish among the defendants insofar as the conspiracy is concerned. However, even if they be deemed separate cases, the same result should obtain from an application of collateral estoppel.

The same criteria which sounded the death knell for the doctrine of mutuality of estoppel in patent cases, *Blonder-Tongue Labs. v. Univ. of Ill. Found*, 402 U.S. 313 (1971) here obtain, so that it is immaterial as to whether Meier would be bound by the Court's ruling on

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[1]The third count of the indictment on Meier's motion was transferred for trial to the Central District of California.

Cowley's motion. The Government had its day in court regarding the sufficiency of the indictment, and it should not have another. If the first ruling was erroneous as a matter of law for whatever reason, then the Government should have appealed.

> "Permitting repeated litigation of the same issue as long as the supply of unrelated defendants holds out reflects either the aura of the gaming table or 'a lack of discipline and of disinterestedness on the part of the lower courts, hardly a worthy or wise basis for fashioning rules of procedure.' " 402 U.S. at 328-9.

In *Gambocz v. Yelencsics,* 468 F.2d 837 (3d Cir. 1972), the losing plaintiff in a civil conspiracy action was not permitted to relitigate in another action when the first action had been dismissed with prejudice. In a well-reasoned, lucid analysis of the differences between *res judicata* and collateral estoppel, the court concluded that where "the relationship of the additional parties to the second complaint was so close to parties to the first that the second complaint was merely a repetition of the first cause of action, it is barred by application of the Bruszewski doctrine." (referring to *Bruszewski v. U.S.,* 181 F.2d 419 (3d Cir. 1950)) 468 F.2d at 842. *A fortiori,* we have such an identity of parties here insofar as the allegations of Count I are concerned that *res judicata* is patently a bar to the relitigation of the sufficiency of Count I under the *Bruszewski* doctrine. If all of the defendants named in Count I were before the same judge and one defendant questioned the sufficiency of Count I successfully, there is no doubt that it would be dismissed as to all. The same result should here have obtained, whether the case

against Meier, the case against Cowley, and the case against Hatsis be considered one in which case *res judicata* clearly creates a bar, or as three in which case collateral estoppel estops the U.S. from having another day in court as to the sufficiency of Count I.

The decisions of this Court evidence a trend to restrict the multiplicity of litigation and the vexation and harassment of litigants by repeated waste of judicial time. The orders of the district court squarely ignore these teachings.

III

The Violation of Meier's Constitutional Rights Cannot Be Relitigated as a Matter of Collateral Estoppel.

The same cases compelling the binding effect of the order dismissing Count I also compel the binding effect of the Judgment of the Central District of California that Meier's Constitutional rights under the 4th, 5th, 6th, and 14th Amendments had been violated by his former attorney and the Government. Rather than deny, the district judge should have granted the motion to suppress both on grounds of comity and of collateral estoppel.[2] Since the issue was litigated at a trial, the Government is bound by the final Judgment[3] that Meier's

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[2]The Court will note that the Judgment excludes Nevada from the operation of the permanent injunction. This was done as a matter of comity, since the Hon. R. D. Foley, U.S. District Judge for the District of Nevada, had, as the result of an *ex parte* proceeding to which Meier was not a party and of which he had no notice, ordered Suckling to testify before a Grand Jury.

[3]The fact that the Government defendants have appealed from this Judgment has no bearing on its binding effect. *United States v. United Airlines, Inc.*, 216 F.Supp. 709, 722 (D.Nev. 1962), *aff'd* as to *res judicata, sub nom. United Airlines v. Wiener*, 335 F.2d 379, 404-5 (9th Cir. 1964), *cert. dismissed*, 379 U.S. 951.

Constitutional rights were violated as a matter of collateral estoppel. A like result would obtain under the reasoning of the *McRae* case, 420 F.2d 1283 (D.C. Cir. 1969), even if the civil action in California be considered a pre-trial motion to suppress. In that case, relitigation at trial of a pre-trial suppression order in the defendant's favor was considered erroneous.

Thus, on either basis of collateral estoppel or the policy in favor of permitting the prosecution one time at bat on a suppression issue, the Court below arbitrarily exceeded its discretion in assuming jurisdiction to redetermine whether Meier's Constitutional rights had been violated and then proceeding to determine that they had not. Such procedures almost smack of a denial of due process and a violation of double jeopardy.

Conclusion.

The importance of this matter cannot be underestimated, since the conspiracy count has been set for trial in Reno, Nevada on November 18, 1974, a place where neither the defendant resides, nor his counsel offices, nor the prosecutor's office, nor the judge resides. The Assistant U.S. Attorney assigned to said case just advised counsel for Meier that the Government would probably not proceed to trial on the conspiracy count without Suckling's testimony. Since this count could take from one to two months to try and will require the attendance of witnesses possibly from the Netherlands, England, Switzerland, Lichtenstein, the Bahamas, Netherland Antilles, Grand Cayman, Belgium, and Canada, the expense of such a protracted proceeding will be exorbitant.

Since this Court has held that, although issuance of a writ might result in interlocutory review of an order

that the court of appeals might review after final decision, this does not of itself bar issuance of a writ in proper circumstances. *La Buy v. Howes Leather Co.*, 352 U.S. 249 (1957). "By passing on the court's orders at this juncture we would . . . be doing directly what we could do indirectly." *United States v. Hughes*, 413 F.2d 1244, 1248 (5th Cir. 1969). There is no doubt that justice would be served by the intervention of this Court in its supervisory capacity to forestall the occurrence of an erroneous practice on the part of the District Court with respect to a question "fundamental to the further conduct of the case." *Gillespie v. U.S. Steel*, 379 U.S. 148, 154.

In the interests of economy of judicial time, this Court, rather than remand to the Court of Appeals, should issue a Writ of Mandamus and/or Prohibition

(1) vacating the denial of Meier's motion to dismiss Count I of the indictment, #LV 74-10 and ordering the District Court to grant said motion;

(2) vacating the denial of Meier's motion to suppress illegally obtained evidence and for return of property and ordering the District Court to grant said motion; and

(3) for such other and further relief as may be proper.

Oct. 16, 1974.

Respectfully submitted,

ROBERT H. WYSHAK,
LILLIAN W. WYSHAK,
Attorneys for Petitioner.

Of Counsel:
WYSHAK & WYSHAK.

APPENDIX A.

Minutes of Court.

In the United States District Court, for the District of Nevada, Reno, Nevada.

United States of America, Plaintiff v. John H. Meier, Defendant. Criminal No. LV-74-10-GHB.

Dated: August 2, 1974.

Present: Honorable George H. Boldt U.S. District Judge.

Acting Deputy Clerk: Jerry Basset.

Reporter: Marcie Varney.

U.S. Atty., by Ass't. U.S. Atty.: Charles Brookhart, Special Attorney John Lahart, Dept. of Justice.

Counsel for Defendant: Robert Wyshak.

Proceedings: The further hearing on pending motions coming on regularly this date. It is ordered:

1. Defendant's Motion to Dismiss Count I of the Indictment is denied.

2. Defendant's Motion to Suppress Illegally Obtained Evidence is denied.

3. Defendant's Motion for Return of Property is denied.

4. Defendant's Motion for Bill of Particulars—Plaintiff will respond further to request.

5. Defendant's Motion for Discovery and Inspection—Plaintiff will respond further to request.

6. Defendant's Motion for Disclosure of Surveillance is denied.

7. Defendant's Motion to Depose Richard M. Nixon and F. Donald Nixon is denied.

8. Defendant's Motion for Modification of Conditions for Release is denied.

This matter is set for jury trial to commence at 9:00 a.m., November 18, 1974.

JOHN A. PORTER, Clerk
by: Jerry Basset, Acting Deputy Clerk

APPENDIX B.

Order.

United States Court of Appeals, for the Ninth Circuit.

John H. Meier, Petitioner, vs. United States District Court, District of Nevada, Respondent. United States of America, Real Party in Interest. No. 74-2650.

Filed: Sept. 12, 1974.

Before: Ely and Choy, Circuit Judges.

The petition for writ of mandamus filed on August 30, 1974 is hereby denied.

[Illegible]
U.S. Circuit Judges

APPENDIX C.

Indictment for Violation of Title 18 U.S.C. Section 371—Conspiracy to Defraud; Title 26 U.S.C. Section 7201—Tax Evasion.

In the United States District Court for the District of Nevada.

United States of America, Plaintiff, v. John H. Meier, Robert Kahan, James P. Cowley and Anthony G. Hatsis, Defendants. Criminal-LV 74-10, RDF.

Filed: Jan. 14, 1974.

COUNT I

THE GRAND JURY CHARGES:

1. From on and before May 2, 1969, the exact date being to the grand jurors unknown, and continuously and at all times thereafter, up to and including the date of the filing of this indictment, in the District of Nevada, and elsewhere, the defendants herein:

John H. Meier
Robert Kahan
James P. Cowley
Anthony Hatsis

did unlawfully, knowingly and wilfully combine, conspire, confederate and agree together, with each other, with certain co-conspirators, and with divers other persons whose names are unknown to the grand jury, to defraud the United States by impending, impairing, obstructing and defeating lawful functions of the United States Treasury Department, Internal Revenue Service, in the ascertainment, computation, assessment and collection of income taxes.

2. At the time mentioned in this indictment and specifically during the calendar years 1969 through 1971, except as otherwise indicated herein:

John H. Meier acted as an executive for Hughes Tool Company during 1968 and part of 1969, although his salary was paid by Robert A. Maheu Associates, an entity which, in turn, was retained by Hughes Tool Company and/or Howard R. Hughes to oversee their Nevada operations. He has had some association with mining ventures in and around Nevada and Utah and some connection with a number of domestic corporations, including Georgetown Research and Development Company, Globe Minerals Inc. and Meier-Murray Productions.

Hughes Tool Company was a Texas corporation during 1969, 1970 and 1971, owned by Howard R. Hughes, which invested heavily in Nevada enterprises such as hotels and gambling casinos, mining claims, and real estate.

Anthony G. Hatsis, a long-time resident of Utah, became President of Toledo Mining Company on July 23, 1968. He was a substantial stockholder in Globe Minerals Inc. and was sole proprietor of A.G.H. Distributor, a wholesale liquor distributor.

Globe Minerals Inc. was a Salt Lake City-based mining company interested in locating and developing oil and gas leases. D. David Conn was president of the corporation until approximately late 1969 when he was succeeded in that office by A.L.T. Hays.

Toledo Mining Company, the result of a 1968 merger of West Toledo Mining and American Mining Company, was engaged in development and exploration of gas, oil and ore properties. Anthony G. Hatsis

became president in 1968 and his brother, Thomas Hatsis, was vice president.

James P. Cowley was an attorney who practiced in Salt Lake City and has represented Anthony G. Hatsis since 1966, and in 1969 and 1970 represented Toledo Mining Company and Globe Minerals Inc.

Robert Kahan was a Certified Public Accoontant practicing in Los Angeles, California.

Maatschappij-Intermovie, N.V., hereafter cailed "Intermovie", was incorporated in The Netherlands in 1968; its managing director, D. Van Ruller, was an international tax consultant. E. B. Van Walsum was an accountant and acted as agent and representative for Intermovie at various times during 1969, 1970 and 1971.

3. The grand jury further charges that the following was part of said unlawful conspiracy:

A. The aforesaid defendants would effect and bring about sales of mining claims and options to purchase mining claims to the Hughes Tool Company and its wholly-owned subsidiaries and nominees.

B. The aforesaid defendants would effect and cause to be effected a scheme and plan whereby monies and profits and substantial portions of the profits from said sales would be transferred from the United States to foreign countries, would be disguised as monies and profits which properly were exempt from taxation as income by the United States Government, and would not be reported as taxable income in the United States.

C. The aforesaid defendants would direct and cause monies and profits and substantial portions thereof which were derived from said sales to be paid direct-

ly and indirectly to Intermovie and to its representatives and agents.

D. The aforesaid defendants would sign and cause to be signed various falsely dated and predated letters, instruments, documents, and agreements, which were designed to indicate and to establish that said Intermovie and its representatives and agents were legally and contractually entitled to be paid said monies and profits and substantial portions thereof.

E. The aforesaid defendants would prepare and cause to be prepared and would file and cause to be filed with the Internal Revenue Service various false income tax returns and false partnership returns of income that were designed to indicate and establish that Intermovie and its representatives and agents were legally and contractually entitled to be paid said monies and profits.

F. The aforesaid defendants would prepare and cause to be prepared and would cause to be offered to the Internal Revenue Service various letters, instruments, documents and agreements which were designed falsely to indicate and to establish to the Internal Revenue Service that said Intermovie and its representatives and agents were legally and contractually entitled to be paid said monies and profits, and that the aforesaid various false income tax returns and false partnership returns of income were not false, but were true and correct.

G. The aforesaid defendants would direct and cause to be established corporations, trusts, and bank accounts in foreign countries whereby monies and profits from said sales to Hughes Tool Company, as well as earnings and interest therefrom, could be held for them and for their benefit.

H. The aforesaid defendants would direct and cause monies from said corporations, trusts and bank accounts in foreign countries to be paid to and for the benefit of one and more of said defendants.

I. The aforesaid defendants would direct and cause a portion of the monies and profits from said sales to Hughes Tool Company to be retained in the United States and would direct and cause payments therefrom to be made to and for the benefit of one and more of the aforesaid defendants.

OVERT ACTS

In the pursuance of the aforesaid conspiracy and to effect the objects thereof, the following overt acts were done and performed by the defendants and the co-conspirators and by other persons unknown to the grand jury:

1. On or about May 2, 1969, John H. Meier met with John R. Suckling in Las Vegas, Nevada.

2. Between on or about May 2, 1969 and on or about June 14, 1969, John H. Meier, Robert Kahan, John R. Suckling and Charles Adams met in Las Vegas, Nevada, on one or two occasions.

3. On or about May 23, 1969, an escrow agreement was established in Salt Lake City, Utah, whereby certain mining claims would be conveyed to Hughes Tool Company or a wholly-owned subsidiary or nominee for Hughes Tool Company for a sales price of $2,900,000.00.

4. On or about June 2, 1969, Anthony G. Hatsis caused James P. Cowley to issue a check from said escrow payable to Continental Bank and Trust Company in the amount of $900,000.00 which check was

used to obtain a cashier's check in the same amount payable to John Suckling.

5. On or about June 14, 1969, John Suckling, Robert Kahan, John H. Meier and Charles W. Adams met in Las Vegas, Nevada, and John H. Meier handed John Suckling said cashier's check for $900,000.00.

6. Between June 17, 1969 and March 2, 1970, agents for Intermovie met with Anthony G. Hatsis and James P. Cowley in Salt Lake City, Utah, on several occasions.

7. On or about June 20, 1969, the Hughes Tool Company by its representative, John H. Meier agreed to purchase certain mining claims from Anthony G. Hatsis for the sum of $850,000.00.

8. On or about August 21, 1969, Anthony G. Hatsis in Salt Lake City, Utah, exchanged his personal check payable to the First Security State Bank for a cashier's check dated August 21, 1969 in the amount of $480,000.00, payable to Intermovie.

9. On or about August 29, 1969, John H. Meier caused to be transmitted by the Hughes Tool Company $1,500,000.00 to the Continental Bank and Trust Company, Salt Lake City, Utah, to be used to purchase certain mining claims for Hughes Tool Company.

10. On or about September 15, 1969, James P. Cowley opened an escrow with $1,494,262.34 which represented proceeds of the above sale to Hughes Tool Company of aforesaid mining claims.

11. On or about September 16, 1969, James P. Cowley paid from escrow $900,000.00 which was exchanged for a cashier's check dated September 17, 1969 in the amount of $900,000.00 payable to E. B. Van Walsum for the account of Intermovie.

12. On or about October 17, 1969, John H. Meier caused to be transmitted to the Continental Bank and Trust Company $1,900,000.00 from the Hughes Tool Company to be used to purchase certain mining claims for Hughes Tool Company.

13. On or about December 22, 1969, James P. Cowley opened an escrow with $1,880,843.50 which came from the proceeds of the above purchase of mining claims by the Hughes Tool Company.

14. On or about December 19, 1969, James P. Cowley issued a check from said escrow payable to First Security Bank in the amount of $1,150,000.00, which check was exchanged for two checks of the First Security State Bank, each of which was payable to E. B. Van Walsum for the account of Intermovie and each was dated December 22, 1969—one check was in the amount of $900,000.00; the other check was in the amount of $250,000.00.

15. On or about December 30, 1969, James P. Cowley met Charles Adams and John Suckling in California.

16. On or about December 31, 1969, Anthony G. Hatsis, John H. Meier, John Suckling, Charles Adams and others met at the International Hotel in Las Vegas, Nevada.

17. On or about July 30, 1969, Robert Kahan wrote a letter to John Suckling and Charles Adams.

18. On or about August 27, 1969, Robert Kahan wrote a letter to John Suckling and Charles Adams.

19. In October of 1969, Robert Kahan, E. B. Van Walsum and John Suckling went to Nassau in the Bahama Islands.

20. On or about December 4, 1969, an escrow was opened in the Continental Bank and Trust Com-

pany in Salt Lake City, Utah, with a deposit of $1,400,000.00 from Hughes Tool Company which was to be used to purchase various mining claims.

21. From said escrow on or about March 3, 1970, $1,386,976.02 was disbursed by check to Globe Minerals Inc. On or about that date Anthony G. Hatsis and James P. Cowley caused A.L.T. Hays, President, and D. David Conn, Secretary-Treasurer, of Globe Minerals, Inc. to endorse said check to be exchanged for cashier's check dated March 3, 1970, in the amount of $1,386,976.02, payable to Intermovie.

22. On or about February 2, 1970, Anthony Hatsis, John H. Meier, John Suckling and E. B. Van Walsum traveled together from the United States to Curacao, Netherlands Antilles.

23. On or about March 3, 1970, Hatsis received $50,000.00 in currency.

24. On or about November 25, 1970, James P. cowley sent a telegram to John Suckling.

25. In December 1970 a meeting was held at Los Angeles International Airport between Anthony G. Hatsis, James P. Cowley, John H. Meier, John Suckling, Charles Adams and Robert Kahan.

26. On or about December 28, 1970, James P. Cowley wrote a letter to Jonquil Investment.

27. On or about December 21, 1970, Anthony G. Hatsis was issued a check in the amount of $50,000.00 drawn on the Swiss Bank Corporation Overseas, Ltd. and said check was deposited to Hatsis' account at First Security State Bank, Salt Lake City, on December 28, 1970.

28. On or about January 4, 1971, Anthony G. Hatsis was issued a check in the amount of $250,-

000.00 drawn on Swiss Bank Corporation Overseas, Ltd. and said check was deposited to Hatsis' account at First Security State Bank, Salt Lake City, on January 15, 1971.

29. On or about February 2, 1971, Anthony G. Hatsis was issued a check for $200,000.00 drawn on the Swiss Bank Corporation Overseas, Ltd. and said check was deposited to Hatsis' account at First Security State Bank, Salt Lake City, on February 10, 1971.

30. On or about November 28, 1969, a trust by the name of Meier-Calliandra was funded with $1,100,000.00 by a bank credit to the Trust Corporation of the Bahamas, Nassau.

31. On or about April 14, 1970, a U.S. Partnership Return of Income (Form 1065) was filed on behalf of HBW Ventures with the Internal Revenue Service.

32. On or about April 14, 1970, a U.S. Partnership Return of Income (Form 1065) was filed on behalf of BB Ventures with the Internal Revenue Service.

33. On or about April 15, 1970, a joint income tax return of John H. and Jennie E. Meier for the year 1969 was filed with the Internal Revenue Service.

34. On or about May 17, 1971, a joint income tax return of John H. and Jennie Meier for the year 1970 was filed with the Internal Revenue Service.

35. On or about April 15, 1970, a joint income tax return of Anthony G. and Grethe Hatsis for the year 1969 was filed with the Internal Revenue Service.

36. On or about October 18, 1971, a joint income tax return of Anthony G. and Grethe Hatsis for the year 1970 was filed with the Internal Revenue Service.

In violation of Title 18, United States Code, Section 371.

COUNT II

That in the Federal Judicial District of Nevada, JOHN H. MEIER, then a resident of Las Vegas, Nevada, did wilfully and knowingly attempt to evade and defeat a large part of the income tax due and owing by him and his wife to the United States of America for the calendar year 1969 by causing the receipt of a portion of his income to be in the name of a foreign company, or agents or nominees thereof, and by causing the concealment of assets in the form of foreign trusts and foreign bank accounts, in the Federal Judicial District of Nevada, in 1969, and by preparing and causing to be prepared, by filing and causing to be filed, and by signing and causing to be signed a false and fraudulent joint income tax return for the year 1969 on behalf of himself and his wife, which was filed with the Internal Revenue Service on or about April 15, 1970, wherein it stated tha their taxable income for said calendar year was the sum of $56,916.00 and that the amount of tax due and owing thereon was the sum of $22,732.00, whereas, as he then and there well knew, his and his wife's taxable income was the sum of $1,771,916.00, upon which said taxable income they owed to the United States of America an income tax of $1,332,453.00.

In violation of Section 7201, Internal Revenue Code; 26 U.S.C., Section 7201.

COUNT III

That in the Federal Judicial District of Nevada, JOHN H. MEIER did wilfully and knowingly attempt to evade and defeat a large part of the income tax due and owing by him and his wife to the United States of America for the calendar year 1970 by concealing

assets in the form of currency, by causing the receipt of a portion of his income to be in the name of a foreign company, and by the concealment of assets in foreign trusts and foreign banks, in the Federal Judicial District of Nevada in 1970, and by preparing and causing to be prepared, by filing and causing to be filed, and by signing and causing to be signed, a false and fraudulent joint income tax return for the year 1970 on behalf of himself and his wife, which was filed with the Internal Revenue Service on or about May 17, 1971, wherein it stated that their taxable income for said calendar year was the sum of $42,226.93 and that the amount of tax due and owing thereon was the sum of $13,470.67, whereas, as he then and there well knew, his and his wife's taxable income for the year 1970 was the sum of $583,214.94 upon which said income they owed to the United States of America an income tax of $386,-247.57.

In violation of Section 7201, Internal Revenue Code; 26 U.S.C., Section 7201.

A TRUE BILL:

/s/ Genina B. Armstrong
FOREMAN OF THE GRAND JURY

V. DEVOE HEATON
United States Attorney
by:
/s/ John E. Lahart
JOHN E. LAHART
Special Attorney
Department of Justice

/s/ John R. Lusk
JOHN R. LUSK
Assistant United States Attorney

APPENDIX D.

Memorandum Opinion and Order Granting Defendant Cowley's Motion for Severance, Granting Defendant Cowley's Motion for Dismissal of Count I of the Indictment, and Recusing Hon. Willis W. Ritter From Any Consideration of the Matters Pending Against Defendant Hatsis.

In the United States District Court for the District of Utah, Central Division.

United States of America, Plaintiff, v. James P. Cowley and Anthony G. Hatsis, Defendants. CR 74-35.

Filed June 20, 1974.

On January 14, 1974, a Federal Grand Jury in Nevada filed a three count Indictment against John H. Meier, Robert Kahan, James P. Cowley and Anthony G. Hatsis. Count I charged all four defendants with conspiracy to defraud the United States, in violation of 18 U.S.C. 371. Counts II and III charged John H. Meier with wilful attempt to evade or defeat payment of federal income tax, in violation of 26 U.S.C. 7201.

On February 23, 1974, the United States District Court for the District of Nevada (Hon. Geo. H. Boldt, Senior District Judge for the U.S. District Court of the Western District of Washington, sitting) ordered that this case be transferred to the United States District Court for the District of Utah as to the defendants Cowley and Hatsis.

1. Cowley's Motion to Sever

It is the opinion of this Court that the interest of justice requires severance of the proceedings involving the two defendants Cowley and Hatsis. The acts of which Cowley is accused consist only of his ordinary

lawful and professional functions as a lawyer. There is such a wide gulf between the allegations against the defendants other than Cowley and the allegations against Cowley that to try all of the defendants together would severely prejudice Cowley and adversely affect his right to a fair and impartial trial.

Therefore, IT IS HEREBY ORDERED that all further proceedings in this case involving the defendants Cowley and Hatsis are severed.

2. Cowley's Motion to Dismiss Count I of the Indictment

It is the opinion of this Court that Count I of the Indictment presents a vague and amorphous charge of unlawful conspiracy that fails to meet the Constitutional standards of legal sufficiency for a proper indictment. Count I sets forth 36 overt acts allegedly taken pursuant to a criminal conspiracy. These acts are wholly innocent and devoid of criminality. Paragraph 3, the charging paragraph of Count I, does not allege deceit, craft, trickery, or any dishonesty on Cowley's part; nor does it allege any common criminal purpose or intent; nor does it allege that Cowley had a stake in any criminal venture.

In dismissing all counts of another Indictment filed by this same Federal Grand Jury in Nevada against Howard R. Hughes, David B. Charnay, Chester C. Davis, Robert A. Maheu, and James N. Nall, Judge Bruce R. Thompson of the United States District Court for the District of Nevada commented (Tr. 98-102.):

> I have been practicing law in one form or another since 1936. I have defended a great many criminal cases, and for ten years I was a Federal prosecutor. In the past ten or so years, I have

> been a Federal judge. And I think it should be said that in all my experience, this is the worse criminal pleading I have ever encountered. . . .
>
> I cannot read this indictment, which I have read and reread a good many times, and reach in my own mind any idea of what the Grand Jury intended with respect to the nature and scope of the conspiratorial agreement; how or in what manner it would constitute a violation of the Federal law, or whether or not the intent is to charge a conspiracy to violate the law by unlawful means to accomplish a lawful objective, or whether the objective itself is unlawful. . . .
>
> I think it would be a perversion of justice to require any defendant to go to trial under this particular indictment, which has got to be interpreted in the manner most favorable to the prosecution in order for the indictment to attain the semblance of properly charging a public offense.

This Court believes that Judge Thompson's views apply in revealing the unconstitutional defects in Count I of the present Indictment. It is the opinion of this Court that Count I is insufficient because it fails to specify the offense charged with the type of particularity required by Rule 7(c), Federal Rules of Criminal Procedure, in violation of Cowley's right to be informed of the nature and cause of the accusation against him as guaranteed by the Sixth Amendment to the United States Constitution and in violation of his right to be charged with his alleged offense only upon the indictment of a Grand Jury as guaranteed by the Fifth Amendment.

Therefore, IT IS HEREBY ORDERED that Count I of the Indictment is dismissed as to the defendant Cowley.

The Court also notes that the United States Government has acted to its great discredit in pursuing this incompetent and apparently vindictive attack upon an attorney of heretofore unquestioned reputation and highest professional standing.

3. Order of Recusation

The Honorable Willis W. Ritter, Chief Judge of this Court, HEREBY RECUSES himself from any consideration of the matters pending against the defendant Hatsis.

Dated this 20th day of June, 1974.

By the Court:
/s/ Willis Ritter
Willis W. Ritter, Chief Judge

APPENDIX E.

Judgment and Order Granting Permanent Injunction.

United States District Court, Central District of California.

John H. Meier, Plaintiff, v. William Keller, et al. Defendants. Civil No. 73-3019-AAH.

Filed: Jan. 9, 1974.

GOOD CAUSE APPEARING THEREFOR, the Court having considered the verified complaint and other pleadings and memoranda filed herein, the affidavits of John H. Meier, R. H. Wyshak, and C. H. Magnuson, the testimony of John Suckling, the papers in Nev. District Court action, Misc. 266, forwarded to this Court by the Hon. R. D. Foley, U.S. District Judge, District of Nevada, received in evidence as Court's Ex. 1 under seal consisting of: (1) Application for Court order to require testimony and affidavit of John Suckling, filed 11/20/73; (2) Copy of complaint entitled Hughes Tool Co. v. Hatsis et al. filed 3/17/72 in U.S. District of Utah; (3) Memo by Heaton & Lahart in support of request to require testimony by Suckling before Grand Jury, filed 11/20/73; (4) Order requiring testimony by Suckling, filed 11/20/73; (5) Petition and Order for sealing record, filed 11/20/73; (6) Petition & Order for release of order sealing memo, Suckling Affidavit, and application and order, supra, filed 12/20/73, the papers received as plaintiff's exhibit 1, consisting of the papers filed as #73-3617 on Dec. 8, 1973 in the Court of Appeals for the Ninth Circuit, Suckling's exhibits 1, 2, 3, and 4, and the Affidavit of Scott P. Crampton dated Dec. 28, 1973 and filed herein Jan. 4, 1974, and the Court having

concluded that it has jurisdiction of the subject matter and jurisdiction over all the defendants and that defendant Suckling has violated or may be about to violate, at the solicitation of the Government, plaintiff's constitutional rights under the 4th, 5th, 6th, and 14th Amendments of the U.S. Constitution and breached and violated or may have and may be about to breach and violate plaintiff's attorney-client privilege, the plaintiff not having waived it, by delivering in Los Angeles, Cal. papers belonging to plaintiff, prepared, for plaintiff by Suckling and other persons at his direction or which came into Suckling's custody at plaintiff's direction or request, to the Internal Revenue Service and the U.S. Government, Dept. of Justice, without any notice to plaintiff or his known present counsel, and by testifying before a Grand Jury in Nevada regarding plaintiff, confidential communications with the plaintiff, and legal work done for plaintiff by Suckling and other persons at his direction, without any notice to plaintiff or his present known counsel, all of which was done apparently without affording plaintiff or his present known counsel any opportunity to claim the attorney-client privilege, the privilege against self-incrimination under the 5th Amendment, the privilege under the 4th Amendment to be free of unreasonable search and seizure without any warrant having been issued, and the privileges of the 6th and 14th Amendments; the plaintiff being represented by WYSHAK & WYSHAK, Lillian Wyshak and Robert Wyshak, the defendants Bork and Keller, by C. H. MAGNUSON, Asst. U.S. Attorney Chief, Tax Div., Central District of California, R. L. BROSIO, Chief Assistant U.S. Attorney, Central District of California, J. E. LAHART Special Attorney, Dept. of Justice, and the defendant Suckling

by MARK PASTOR, and the Court having found and concluded that the same possible denial of constitutional rights to plaintiff may or might occur in the Central District of California, and good cause appearing,

IT IS HEREBY ORDERED that:

1. The Defendants, and each of them shall be, and they hereby are, permanently enjoined and restrained from conducting any investigation or Grand Jury investigation, and from initiating any criminal proceeding, or any other District except the District of Nevada, in the Central District of California in which there will be used, directly or indirectly, any unlawful testimony or evidence containing privileged confidential communications between plaintiff and Suckling obtained from Suckling or any leads derives therefrom; provided, however, that

2. Defendant's U.S. Attorney and Attorney General may, on at least 30 days' written notice delivered to plaintiff and his aforesaid counsel request relief by this Court from this Order for good cause shown.

3. Defendant Suckling shall be, and he hereby is, permanently restrained and enjoined from testifying or presenting any evidence against plaintiff in the Central District of California or any other District except the District of Nevada, as to any confidential communication with plaintiff and any work and any corollary service incident thereto done for plaintiff by Suckling or any person acting under him or by his order, authority or direction or delivering to a person the papers or copies thereof described in ¶4, infra; provided however, that defendant Suckling may, on at least 30 days' written notice delivered to plaintiff and his said counsel, request relief by this Court from this Order for good cause shown.

4. Defendant Suckling is ordered to deliver to Meier or his said counsel all papers delivered to Suckling or any person acting under him or by his order, authority or direction, by plaintiff or at his direction from third-parties, and all documents prepared by Suckling or any person acting under him or by his order, authority or direction, for, or affecting, plaintiff or any entities in which plaintiff or his family have any interest; and is further ordered to make demand therefor on the Internal Revenue Service and Dept. of Justice and Attorney General, and the Attorney General is ordered to comply with such request, retaining copies thereof if he so desires.

5. The U.S. Attorney and Attorney General are ordered to offer plaintiff and his said counsel a pre-indictment conference at least 30 days prior to the initiation of any criminal proceeding, naming plaintiff in the Central District of California arisng out of the matters herein contained and referred to;

6. Plaintiff is hereby enjoined and restrained from attempting to communicate directly with Suckling or members of the law firm of Pratte & Suckling, including but not necessarily limited to Robert P. Pratte and John A. Bartlett, and that plaintiff is enjoined and restrained from threatening, harassing or annoying said person or persons, and that all communications from plaintiff to Suckling or to members of the law firm of Pratte & Suckling are to be directed solely through said plaintiff's attorneys of record herein to the attorneys of record for Suckling herein;

7. No security shall be required hereunder of plaintiff;

8. Each party shall bear his and its own costs of suit incurred herein;

9. This shall be considered a final decision of the District Court and if otherwise considered, the Court is of the opinion that such order involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the litigation. This is a final order which is appealable.

Approved as to form:

W. Keller, U.S. Attorney
R. L. Brosio, Chief Asst. U.S. Atty.
C. H. Magnuson, Asst. U.S. Atty., Chief, Tax Div.
..... Jan. ...., 1974
Attys for U.S. Atty and
Attorney General

Not Approved as to Form—See Attached Memorandum Incorporated by Reference Herein.

DeCastro, West & Chodorow, Inc.
Mark Pastor
/s/ Mark D. Pastor
Attys for Suckling Jan. 8, 1974